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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL DAVIS, and
 SHAWN RICE,

Defendants.

Case No: 2:09-CR-00078-JCM-RJJ
 OPPOSITION TO DEFENDANT'S
 MOTION TO DISMISS

Plaintiff, UNITED STATES OF AMERICA, by and through counsel of record, opposes defendant's Motion to Dismiss Indictment for Lack of Jurisdiction. This opposition is made and based upon the following and all other pleadings and papers on file with the Court.

It is difficult to decipher all of the defendant's claims. There seems to be an argument that the criminal indictment failed to comply with Federal Rule of Civil Procedure, Rule 17 and does not identify a real person of interest. However, this is not a civil proceeding. Defendant has been charged by indictment with violating federal criminal offenses. Exhibit 1 (Crim. Indictment, March 2009). The indictment the Government has brought against the defendant complies with the Federal Rules of Criminal Procedure, in particular in this instance Rule 7, concerning nature and content. The Government has and will continue to proceed with this matter in compliance with the Federal Rules of Criminal Procedure.

Furthermore, within the defendant's somewhat confused legal analysis, there seems to be a request to dismiss the criminal action on the grounds that this court lacks jurisdiction because it is a Court of Admiralty. The defendant draws this conclusion based on the idea that the United States Flag displayed in front of the courthouse is an Admiralty flag. This assumption is also the basis for the defendant's demand for the production of documents that do not exist, and, subsequently, are impossible to produce: i.e., letter(s) of marque and reprisal. Therefore, this response will address the only clear issue of whether or not it is appropriate for this court to exercise jurisdiction over the defendant and the subject matter.

The United States Constitution, Article III, sections 1 and 2, invest Congress with the authority to create federal district courts and to give them jurisdiction in the "exact degree and character which congress may think proper for the public good." *Cary v. Curtis*, 44 U.S. 236, 245 (1845). The United States District Court for the District of Nevada is one of those courts imbued with original jurisdiction to hear and decide cases pertaining to offenses against the laws created by Congress. 18 U.S.C. § 3231.

The subject-matter before this court does not relate to the violation of any maritime laws. The defendant is being charged with the violations of 18 U.S.C. §§ 1956 (a)(3) and 1956 (h), money laundering and money laundering conspiracy. Exhibit 1 (Crim. Indictment, March 2009). These offenses against the federal law were committed on land in the District of Nevada and elsewhere. It is nonsensical to believe this court would be exercising jurisdiction as an Admiralty Court over this matter. *Black's Law Dictionary* defines admiralty:

1. A court that exercises jurisdiction over all maritime contracts, torts, injuries, or offenses. * The federal courts are so called when exercising the their admiralty jurisdiction, which is conferred by the U.S. Constitution (art. III, § 2, cl. 1). (8th ed. 2004).

The defendant asserts that the flag in front of the courthouse is an Admiralty flag. The U.S. Flag is a codified symbol of this nation. The regulation of the flag including its design can be found in 4 U.S.C. § 1 et .al. Nowhere in the flag code does it refer to the national symbol as

1 an Admiralty flag nor is the flag regulated to being a symbol of maritime law. The defendant
2 has concluded erroneously that the flag in front of this courthouse identifies this court to be
3 exercising admiralty jurisdiction over this matter. Instead, pursuant to the U.S. Constitution
4 Art. III, § 2, cl. 1 and 18 U.S.C. § 3231, (as this is not a civil action) this court appropriately
5 has subject-matter jurisdiction over this criminal action.

6 CONCLUSION

7 The court is not acting as an admiralty court and has original jurisdiction to hear matters
8 concerning offenses against the United States. This proceeding is not a civil lawsuit but a
9 criminal proceeding. The alleged criminal acts are violations of federal law committed within
10 and outside of the District of Nevada. For the aforementioned reasons, the government
11 respectfully requests this court to deny the defendant's motion to dismiss and to quash his
12 subpoena duces tecum.

13 DATED this 28th day of August, 2009.

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15 GREGORY A. BROWER
16 United States Attorney

17 /s/ Eric Johnson
18 ERIC JOHNSON
19 Chief, Organized Crime Strike Force

20 /s/ Geneva Lemon
21 GENEVA LEMON
22 Certified Law Clerk
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